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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,607	11/21/2003	James Edmond Van Trump	CL2121 US NA	3125
43693 7590 05/22/2009 INVISTA NORTH AMERICA S.A.R.L. THREE LITTLE FALLS CENTRE/1052 2801 CENTERVILLE ROAD WILMINGTON, DE 19808				
EXAMINER TENTON, LEO B				
ART UNIT 1791		PAPER NUMBER		
NOTIFICATION DATE 05/22/2009		DELIVERY MODE ELECTRONIC		

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES EDMOND VAN TRUMP

Appeal 2009-001781
Application 10/719,607
Technology Center 1700

Decided:¹ May 20, 2009

Before BRADLEY R. GARRIS, CHUNG K. PAK, and
KAREN M. HASTINGS, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 from the Examiner's
decision rejecting claims 1-8. We have jurisdiction under 35 U.S.C. § 6.

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the Decided Date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

We REVERSE.

Statement of the Case

Appellant claims a process for preparing polyester bicomponent fibers which comprises determining a maximum shrinkage spinning rate of the polymers and spinning a strand of the polyester bicomponent fibers at a linear rate of $\pm 10\%$ of the maximum shrinkage spinning rate.

Representative independent claim 1 reads as follows:

1. A process for preparing polyester bicomponent fibers the process comprising combining at least two crystallizable polyester polymers, determining a maximum shrinkage spinning rate of said polymers, melting said polyester polymers, causing said molten polymers to flow through a spinneret having one or more apertures, said spinneret being suitable for preparing bicomponent fibers, thereby spinning at least one strand of 0.5 to 6 denier fiber said strand being spun at a linear rate of $\pm 10\%$ of the maximum shrinkage spinning rate, said two crystallizable polyester polymers differing from one another in crystallization rate under the spinning conditions.

The references relied upon by the Examiner as evidence of obviousness are:

Chang	2002/0025433	Feb. 28, 2002
Koyanagi	2003/0052436 A1	Mar. 20, 2003
Ochi	EP 1 059 372 A2	Dec. 13, 2000

The Examiner rejects all appealed claims under 35 U.S.C. § 103(a) as being unpatentable over Koyanagi or Ochi or Chang.

Issue

Has Appellant shown error in the Examiner's conclusion that "the determination of MSSR [i.e., maximum shrinkage spinning rate] would have been obvious to one of ordinary skill in the art at the time the invention was

made in each one of the cited references in order to manufacture polyester bicomponent fibers having a desired amount of latent crimp” (Ans. 10)?

Findings of Fact

The Examiner acknowledges that each of the applied references fails to teach the claim 1 step of determining a maximum shrinkage spinning rate (Ans. 5, 6, 8). The Examiner finds that each of these references teaches spinning rates which “are comparable to those set forth by appellant in the examples on page 13, lines 1-2, 7-8 and 13-14 of the instant specification” (Ans. para. bridging 9-10). Finally, the Examiner finds that

“each one the cited references is directed to making polyester bicomponent fibers having latent crimp, each one of the cited references spins polyester polymer materials at a spinning rate to achieve a desired amount of latent crimp and each one of the references teaches spinning rates (determined by the authors of the references) for spinning polyester polymer materials”

(*id.*).

Principles of Law

Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006), cited with approval in *KSR Int’l. Co. v. Teleflex*, 550 U.S. 398, 417-18 (2007).

Analysis

Appellant argues that none of the applied references contains any teaching or suggestion of the claim 1 step “determining a maximum shrinkage spinning rate of said polymers” (App. Br. 6; Reply Br. 3-4). According to Appellant, even if the applied references inadvertently achieve

a spinning rate for a particular bicomponent fiber which is $\pm 10\%$ of the maximum shrinkage spinning rate, the references “still fail to teach the [claim 1] step of determining the maximum shrinkage spinning rate” (Reply Br. 5). We agree with Appellant.

At best, the Examiner’s findings merely establish that the applied references disclose spinning rates which include those exemplified by Appellant as being maximum shrinkage spinning rates for specific combinations of polyester polymers. On this record, the Examiner has failed to establish that these references contain any teaching or suggestion concerning a maximum shrinkage spinning rate. Stated differently, the Examiner has not shown that the claim 1 parameter “maximum shrinkage spinning rate” was known in the applied prior art and was recognized by this prior art as being a result effective parameter in processes for preparing polyester bicomponent fibers. Under these circumstances, no basis exists for concluding that it would have been obvious for one with ordinary skill in this art to determine a maximum shrinkage spinning rate as required by claim 1.

In summary, the Examiner has not provided articulated reasoning with some rational underpinning to support the above-quoted legal conclusion of obviousness. On the record of this appeal, therefore, the Examiner’s obviousness conclusion must be regarded as a mere conclusory statement.

Conclusions of Law

Appellant has shown error in the Examiner’s conclusion that “the determination of MSSR [i.e., maximum shrinkage spinning rate] would have been obvious to one of ordinary skill in the art at the time the invention was

made in each one of the cited references in order to manufacture polyester bicomponent fibers having a desired amount of latent crimp” (Ans. 10).

It follows that we cannot sustain the Examiner’s § 103 rejection of all appealed claims as being unpatentable over Koyanagi or Ochi or Chang.

Order

The decision of the Examiner is reversed.

ssl

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